

SENATE BILL

No. 1564

**Introduced by Committee on Judiciary (Senators Escutia
(Chair), Cedillo, Ducheny, Kuehl, and Sher)**

February 19, 2004

An act to amend Section 3440.1 of the Civil Code, relating to fraudulent transfers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1564, as amended, Committee on Judiciary. Fraudulent transfers: personal property.

Existing law, the Uniform Fraudulent Transfer Act, provides generally that a transfer of personal property not accompanied by delivery and change of possession is void against the transferor's creditors. Existing law, however, also exempts from that rule any of a list of specific types of transfers.

This bill would additionally exempt from that rule any transfer of property by ~~a~~ any governmental entity.

The bill would incorporate additional changes in Section 3440.1 of the Civil Code proposed by SB 772, that would become operative only if this bill and SB 772 are both chaptered and become effective and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3440.1 of the Civil Code is amended to
2 read:

1 3440.1. This chapter does not apply to any of the following:

2 (a) Things in action.

3 (b) Ships or cargoes if either are at sea or in a foreign port.

4 (c) The sale of accounts, chattel paper, payment intangibles, or
5 promissory notes governed by the Uniform Commercial Code,
6 security interests, and contracts of bottomry or respondentia.

7 (d) Wines or brandies in the wineries, distilleries, or wine
8 cellars of the makers or owners of the wines or brandies, or other
9 persons having possession, care, and control of the wines or
10 brandies, and the pipes, casks, and tanks in which the wines or
11 brandies are contained, if the transfers are made in writing and
12 executed and acknowledged, and if the transfers are recorded in the
13 book of official records in the office of the county recorder of the
14 county in which the wines, brandies, pipes, casks, and tanks are
15 situated.

16 (e) A transfer or assignment made for the benefit of creditors
17 generally or by any assignee acting under an assignment for the
18 benefit of creditors generally.

19 (f) Property exempt from enforcement of a money judgment.

20 (g) Standing timber.

21 (h) Subject to the limitations in Section 3440.3, a transfer of
22 personal property if all of the following conditions are satisfied:

23 (1) Prior to the date of the intended transfer, the transferor or
24 the transferee files a financing statement, with respect to the
25 property transferred, signed by the transferor. The financing
26 statement shall be filed in the office of the Secretary of State in
27 accordance with Chapter 5 (commencing with Section 9501) of
28 Division 9 of the Commercial Code, but may use the terms
29 “transferor” in lieu of “debtor” and “transferee” in lieu of
30 “secured party.” The provisions of Chapter 5 (commencing with
31 Section 9501) of Division 9 of the Commercial Code shall apply
32 as appropriate to the financing statement.

33 (2) The transferor or the transferee publishes a notice of the
34 intended transfer one time in a newspaper of general circulation
35 published in the judicial district in which the personal property is
36 located, if there is one, and if there is none in the judicial district,
37 then in a newspaper of general circulation in the county embracing
38 the judicial district. The publication shall be completed not less
39 than 10 days before the date the transfer occurs. The notice shall
40 contain the name and address of the transferor and transferee and

1 a general statement of the character of the personal property
2 intended to be transferred, and shall indicate the place where the
3 personal property is located and a date on or after which the
4 transfer is to be made.

5 (i) Personal property not located within this state at the time of
6 the transfer or attachment of the lien if the provisions of this
7 subdivision are not used for the purpose of evading this chapter.

8 (j) A transfer of property that (1) is subject to a statute or treaty
9 of the United States or a statute of this state that provides for the
10 registration of transfers of title or issuance of certificates of title
11 and (2) is so far perfected under that statute or treaty that a bona
12 fide purchaser cannot acquire an interest in the property
13 transferred that is superior to the interest of the transferee.

14 (k) A transfer of personal property in connection with a
15 transaction in which the property is immediately thereafter leased
16 by the transferor from the transferee provided the transferee
17 purchased the property for value and in good faith (subdivision (c)
18 of Section 10308 of the Commercial Code).

19 (l) Transition property, as defined in Section 840 of the Public
20 Utilities Code.

21 (m) A transfer of property by any governmental entity.

22 *SEC. 1.5. Section 3440.1 of the Civil Code is amended to*
23 *read:*

24 3440.1. This chapter does not apply to any of the following:

25 (a) Things in action.

26 (b) Ships or cargoes if either are at sea or in a foreign port.

27 (c) The sale of accounts, chattel paper, payment intangibles, or
28 promissory notes governed by the Uniform Commercial Code,
29 security interests, and contracts of bottomry or respondentia.

30 (d) Wines or brandies in the wineries, distilleries, or wine
31 cellars of the makers or owners of the wines or brandies, or other
32 persons having possession, care, and control of the wines or
33 brandies, and the pipes, casks, and tanks in which the wines or
34 brandies are contained, if the transfers are made in writing and
35 executed and acknowledged, and if the transfers are recorded in the
36 book of official records in the office of the county recorder of the
37 county in which the wines, brandies, pipes, casks, and tanks are
38 situated.

1 (e) A transfer or assignment made for the benefit of creditors
2 generally or by any assignee acting under an assignment for the
3 benefit of creditors generally.

4 (f) Property exempt from enforcement of a money judgment.

5 (g) Standing timber.

6 (h) Subject to the limitations in Section 3440.3, a transfer of
7 personal property if all of the following conditions are satisfied:

8 (1) Prior to the date of the intended transfer, the transferor or
9 the transferee files a financing statement, with respect to the
10 property transferred, signed by the transferor. The financing
11 statement shall be filed in the office of the Secretary of State in
12 accordance with Chapter 5 (commencing with Section 9501) of
13 Division 9 of the Commercial Code, but may use the terms
14 “transferor” in lieu of “debtor” and “transferee” in lieu of
15 “secured party.” The provisions of Chapter 5 (commencing with
16 Section 9501) of Division 9 of the Commercial Code shall apply
17 as appropriate to the financing statement.

18 (2) The transferor or the transferee publishes a notice of the
19 intended transfer one time in a newspaper of general circulation
20 published in the judicial district in which the personal property is
21 located, if there is one, and if there is none in the judicial district,
22 then in a newspaper of general circulation in the county embracing
23 the judicial district. The publication shall be completed not less
24 than 10 days before the date the transfer occurs. The notice shall
25 contain the name and address of the transferor and transferee and
26 a general statement of the character of the personal property
27 intended to be transferred, and shall indicate the place where the
28 personal property is located and a date on or after which the
29 transfer is to be made.

30 (i) Personal property not located within this state at the time of
31 the transfer or attachment of the lien if the provisions of this
32 subdivision are not used for the purpose of evading this chapter.

33 (j) A transfer of property which (1) is subject to a statute or
34 treaty of the United States or a statute of this state that provides for
35 the registration of transfers of title or issuance of certificates of title
36 and (2) is so far perfected under that statute or treaty that a bona
37 fide purchaser cannot acquire an interest in the property
38 transferred that is superior to the interest of the transferee.

39 (k) A transfer of personal property in connection with a
40 transaction in which the property is immediately thereafter leased

1 by the transferor from the transferee provided the transferee
2 purchased the property for value and in good faith (subdivision (c)
3 of Section 10308 of the Commercial Code).

4 (l) Transition property, as defined in Section 840 of the Public
5 Utilities Code, *or recovery property, as defined in Section 848 of*
6 *the Public Utilities Code.*

7 (m) *A transfer of property by any governmental entity.*

8 SEC. 2. Section 1.5 of this bill incorporates amendments to
9 Section 3440.1 of the Civil Code proposed by this bill and SB 772.
10 It shall only become operative if (1) both bills are enacted and
11 become effective on or before January 1, 2005, (2) each bill
12 amends Section 3440.1 of the Civil Code, and (3) this bill is
13 enacted after SB 772, in which case Section 3440.1 of the Civil
14 Code, as amended by SB 772, shall remain operative only until the
15 operative date of this bill, at which time Section 1.5 of this bill shall
16 become operative, and Section 1 of this bill shall not become
17 operative.

